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Department of Telecommunications (DoT),
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Cc: Shri. Rajendra Kumar, Additional Secretary, Ministry of Electronics and Information Technology
(MeitY)

Subject: BSA and GDA Joint Submission on TRAI's consultation paper on the regulatory framework for promoting data economy through the establishment of data centres.

Dear Sir,

On behalf of BSA | The Software Alliance (**BSA**)¹ and the Global Data Alliance (**GDA**),² we welcome the opportunity to comment on TRAI's consultation paper titled "[Regulatory Framework for Promoting Data Economy through Establishment of Data Centres, Content Delivery Networks and Interconnect Exchanges in India](#)" (**Consultation Paper**), released on December 16 2021.³

BSA and GDA appreciate the TRAI's efforts to promote India's data economy and strengthen India's Data Centre infrastructure and services. However, in articulating the need for improving data centre infrastructure and services, the Consultation Paper endorses a misplaced assumption around privacy and data localization — and adopts the view that localization would create more demand for data centres in India (refer to section 2.35 and 2.36 in the Consultation Paper). We support the development of data centres within India, but the economic benefits of new data centres are best realized when those centres can be used by a wide array of individuals and companies within India to access data and services worldwide. Our comments below specifically highlight the economic harms of data localization and the importance of cross-border data transfers.

¹ BSA is the leading advocate for the global software industry before governments and in the international marketplace. BSA's members are enterprise solutions providers that create the technology products and services that power other businesses. BSA's members include: Adobe, Alteryx, Atlassian, Autodesk, Bentley Systems, Box, CNC/Mastercam, DocuSign, Dropbox, IBM, Informatica, MathWorks, Microsoft, Okta, Oracle, PTC, Salesforce, SAP, ServiceNow, Shopify Inc., Siemens Industry Software Inc., Splunk, Trend Micro, Trimble Solutions Corporation, Twilio, Unity Technologies, Inc., Workday, Zendesk, and Zoom Video Communications, Inc.

² The Global Data Alliance (globaldataalliance.org) is a cross-industry coalition of companies that are committed to high standards of data responsibility and that rely on the ability to transfer data around the world to innovate and create jobs. Alliance members are headquartered across the globe and are active in the advanced manufacturing, aerospace, automotive, consumer goods, electronics, financial services, health, media and publishing, natural resources, supply chain, and telecommunications sectors, among others. BSA | The Software Alliance administers the Global Data Alliance

³ TRAI consultation paper No. 10/2021, December 16, 2021, at: https://www.trai.gov.in/sites/default/files/CP_16122021.pdf.

I. Data Localization Harms Economic Progress

The Consultation Paper suggests that if India adopts a policy of data localization it would “surely” make India a hub for global data centres. That view is contrary to the opinion of a broad range of international organizations and economic analysts, which share the view that cross-border data restrictions and mandatory data localization not only undermine privacy and personal data protection but also cause significant harm to economic development and other national policy objectives. For example,

- The [Indian Council For Research On International Economic Relations \(ICRIER\)](#) issued a 2019 Report on the [*Regulatory Burden on Micro- Small- and Medium Businesses Due to Data Localisation Policies*](#). The report notes that, "MSMEs have been drivers of growth in the Indian economy. There are approximately 64 million MSMEs in India. The sector is the second largest creator of jobs in the country [contributing] ... 29 percent of India's GDP and over 30 percent of Gross Value added (GVA) [, and] over 120 million [jobs]." The ICRIER Report includes findings that "for a micro enterprise ... additional costs from data localization could render the business unviable ..." and cites studies indicating that "local companies would have to pay 30 – 60 percent more for their computing needs, in the event of a forced data localization legislation."⁴
- UNCTAD's [*2021 Economic Development Report*](#) notes that data localization mandates and other forms of “[d]ivergent “data nationalism” will be especially inimical to the interests of developing countries, including LDCs”, resulting in (1) “suboptimal domestic regulations”, (2) “adverse consequences for privacy and security, and prejudicing the interests of domestic Internet users …”, (3) “reduce[d] market opportunities for domestic MSMEs to reach worldwide markets, which may instead be confined to some local or regional markets”, [and] (4) “reduce[d] opportunities for digital innovation, including various missed opportunities for inclusive development that can be facilitated by engaging in data-sharing through strong international cooperation.”⁵
- The World Bank's [*2021 World Development Report*](#) concludes that measures that “restrict cross-border data flows … [may] materially affect a country's competitive edge in the burgeoning trade of data-enabled services.”⁶

The global economy depends on the ability to transfer data across transnational IT networks — and those transfers benefit Indian consumers, workers, and enterprises in all industry sectors, including micro-, small-, and medium-sized enterprises (MSMEs). Indeed, the ability to transfer data across international borders supports [global supply chains](#),⁷ [innovation](#),⁸ [productivity](#),⁹ and [economic](#)

⁴ See ICRIER *Regulatory Burden on Micro- Small- and Medium Businesses Due to Data Localization Policies* at <http://icrier.org/pdf/Regulatory-Burden.pdf>

⁵ See UNCTAD 2021 *Economic Development Report* at <https://unctad.org/page/digital-economy-report-2021>

⁶ See World Bank 2021 *World Development Report* at <https://openknowledge.worldbank.org/bitstream/handle/10986/35218/9781464816000.pdf>

⁷ See GDA *Cross-Border Data Transfers & Supply Chain Management* at <https://globaldataalliance.org/wp-content/uploads/2021/07/03182021gdaprimersupplychain.pdf>

⁸ See GDA *Cross-Border Data Transfers & Innovation* at <https://globaldataalliance.org/wp-content/uploads/2021/07/04012021cbdinnovation.pdf>

⁹ See GDA *Cross-Border Data Transfers & Remote Work* at <https://globaldataalliance.org/wp-content/uploads/2021/07/10052020cbdremotework.pdf>

development¹⁰ in every sector of the economy,¹¹ and is critical to enabling companies of all sizes, to create new jobs, serve customers worldwide, boost efficiency, and drive economic development.

The Consultation Paper's view of transforming India into a "Global Data Centre Hub" is narrowly focused on the benefits of constructing new data centres. However, a data localization policy would impose a wide range of burdens across other industries, workers, and consumers throughout India. For example, if a strict data localization policy were adopted it could prohibit Indian businesses from utilizing global products and services that require transferring data outside of India. That can put Indian businesses — across different industry sectors — at an economic disadvantage. It could limit the ability of Indian companies to rely on world-class services to meet their own customers' demands. It could also prohibit Indian companies from serving customers outside India, or could force them to pay a higher price for services that conform to the localization requirements. These negative economic effects of a data localization policy would be felt broadly, across all industries that rely on digital services, and would affect Indian companies, especially small and medium-sized enterprises.

Furthermore, such policies could even limit the economic benefits of newly constructed data centres by limiting their capabilities to serve as international data hubs. To better realize the economic promise of data centres in India, we urge the TRAI to work with the Ministry of Electronics and Information Technology (**MeitY**) to promote the development of new data centres that enable Indian businesses and consumers to access global products, services, and customer bases — rather than centres that only offer access to localized data. This will help new data centres to drive economic value and growth broadly, by connecting companies of all sizes and industries with global services and markets they can leverage for greater growth.

II. Transfers of Personal Data are Critical to Today's Global Economy

The Consultation Paper also suggests that leading data protection laws support a trend toward data localization. To the contrary, global data protection and privacy laws recognize the importance of promoting international data transfers, which are critical in today's digital economy, whilst taking steps, as necessary, to safeguard personal data of its citizens.

In particular, the consultation paper inappropriately characterizes the European Union's (**EU**) General Data Protection Regulation (**GDPR**) as a data localization law.¹² However, the GDPR is a data protection law that focuses on ensuring the privacy and security of EU citizens' personal data and supporting the movement of such data across international borders. The GDPR does not require businesses to store or mirror data on local servers, and in fact, acknowledges that the proper functioning of the EU market depends on the free flow of data within the EU.¹³ For example, Recital 13 of the GDPR states that "The proper functioning of the internal market requires that the free movement of personal data within the Union is not restricted or prohibited for reasons connected with the protection of natural persons with regard to the processing of personal data." As a result, the

¹⁰ See GDA *Cross-Border Data Transfers & Economic Development* at <https://globaldataalliance.org/wp-content/uploads/2021/07/05062021econdevelopments1.pdf>

¹¹ See GDA *The Cross-Border Movement of Data: Creating Jobs and Trust Across Borders in Every Sector* at <https://globaldataalliance.org/wp-content/uploads/2021/07/GDAeverysector.pdf>

¹² TRAI consultation paper No. 10/2021, para 2.35, page 33.

¹³ General Data Protection Regulation (EU) 2016/679, at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R0679&from=EN>. Article 1 of the GDPR says that it "lays down rules relating to the protection of natural persons with regard to the processing of personal data and rules relating to the free movement of personal data" and "the free movement of personal data within the Union shall be neither restricted nor prohibited for reasons connected with the protection of natural persons with regard to the processing of personal data."

GDPR specifically provides for personal data to be transferred across international borders in a manner that protects its privacy and security.¹⁴

In fact, in its submissions on India's draft Personal Data Protection Bill 2018, the European Commission (EC) emphasized that modern data protection regimes should be designed to afford individuals a high level of protection while facilitating data flows in a way that maximises economic opportunity and consumer interests.¹⁵ In this regard, the EC notes that the GDPR "facilitates international transfers while ensuring a high level of protection" by "offer[ing] a variety of flexible tools, adapted to different business models and transfers situations".¹⁶ The EC noted that localization requirements create "unnecessary costs, difficulties and uncertainties that could hamper business and investments." The EC also observed that localization requirements in India would hurt international trade relations and India's ability to attract foreign investment and may prompt companies to switch the processing of their data to a country that does not impose such constraints. Finally, the EC remarked that "India's striving tech industry does not need this type of forced-localization measures: India is already a top world leader in the data processing industry and has built one of the best digital eco-systems in the world without having recourse to forced localization measures."

We appreciate TRAI's efforts to engage with stakeholders about the best way of promoting India's data economy and strengthening India's data centre infrastructure and services. Strong and sustainable economic growth will result from ensuring that data centres in India can leverage global products and services for the benefit of Indian businesses and Indian consumers — rather than relying on a forced localization mandate. We urge TRAI to work with MeitY to ensure the economic benefits of Indian data centres are broadly realized.

We thank TRAI for the opportunity to comment on this Consultation Paper. We hope that our concerns will be considered. We would be happy to discuss these issues with you further if that would be helpful.

Sincerely,

**BSA | The Software Alliance
Global Data Alliance**

¹⁴ GDPR, Chapter V (Transfers of Personal data to Third Countries or International Organisations).

¹⁵ Submission on draft Personal Data Protection Bill of India 2018 by the Directorate-General for Justice and Consumers to the Ministry of Electronics and Information Technology (MeitY) (on behalf of the EU), at:
https://eeas.europa.eu/headquarters/headquarters-homepage/53963/submission-draft-personal-data-protection-bill-india-2018-directorate-general-justice_en

¹⁶ Submission on draft Personal Data Protection Bill of India 2018 by the Directorate-General for Justice and Consumers to the Ministry of Electronics and Information Technology (MeitY) (on behalf of the EU), at:
https://eeas.europa.eu/headquarters/headquarters-homepage/53963/submission-draft-personal-data-protection-bill-india-2018-directorate-general-justice_en